APPENDIX A — Indictment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

RICHARD J. KNAPP,

Defendant.

INDICTMENT

81 Crim. 0543

COUNT ONE

The Grand Jury charges:

On or about February 22, 1977, in the Southern District of New York, RICHARD J. KNAPP, the defendant, who was employed as a unit manager by the National Broadcasting Company, Inc., New York, New York, did unlawfully, wilfully and knowingly make and subscribe a tax return which he verified by a written declaration that it was made under penalties of perjury and which was filed with the United States Internal Revenue Service, which tax return he did not believe to be true, correct and complete as to every material matter in that the said tax return stated that the total income of RICHARD J. KNAPP for the calendar year 1976 was $20,302; whereas, as he then and there well knew, he received during the calendar year 1976 substantial other income, to wit, approximately $2,770 from false and fraudulent expense vouchers submitted by RICHARD J.

KNAPP to the National Broadcasting Company, Inc.
(Title 26, United States Code, Section 7206(1).)

COUNT TWO

The Grand Jury further charges:

On or about February 22, 1977, in the Southern District of New York, RICHARD J. KNAPP, the defendant, unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing to the United States of America for the calendar year 1976, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed to the Internal Revenue Service a false and fraudulent income tax return wherein it was stated that his taxable income for the calendar year 1976 was $17,152 and the amount of income tax due and owing thereon was the sum of $4,025; whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of $19,922, upon which there was due and owing to the United States of America an income tax of $4,998.

(Title 26, United States Code, Section 7201.)

COUNT THREE

The Grand Jury further charges:

On or about March 14, 1978, in the Southern District of New York, RICHARD J. KNAPP, the defendant, who was employed as a unit manager by the National Broadcasting Company, Inc. New York, New York, did unlawfully, wilfully and knowingly make and subscribe a tax return which he verified by a written declaration that it was made under the penalties of perjury and which was filed with the United States Internal Revenue Service, which tax return he did not believe to be true, correct and com-

plete as to every material matter in that the said tax return stated that the total income of Richard and Ilana Knapp for the calendar year 1977 was $40,729; whereas, as he then and there well knew, he received during the calendar year 1977 substantial other income, to wit, approximately $10,589 from false and fraudulent expense vouchers submitted by RICHARD J. KNAPP to the National Broadcasting Company, Inc.

(Title 26, United States Code, Section 7206(1).)

COUNT FOUR

The Grand Jury further charges:

On or about March 14, 1978, in the Southern District of New York, RICHARD J. KNAPP, the defendant, who during the calendar year 1978 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by himself and his wife to the United States of America for the calendar year 1977, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed to the Internal Revenue Service a false and fraudulent income tax return on behalf of himself and his wife, wherein it was stated that their joint taxable income for the calendar year 1977 was $35,545 and that the amount of income tax due and owing thereon was the sum of $8,022, whereas, as he then and there well knew, their true joint taxable income for the said calendar year was the sum of $46,134 upon which there was due and owing to the United States of America an income tax of $12,648.

(Title 26, United States Code, Section 7201.)

COUNT FIVE

The Grand Jury further charges:

On or about March 31, 1979, in the Southern District of New York, RICHARD J. KNAPP, the defendant, who was employed as a unit manager by the National Broadcasting Company, Inc., New York, New York, did unlawfully, wilfully and knowingly make and subscribe a tax return which he verified by a written declaration that it was made under the penalties of perjury and which was filed with the United States Internal Revenue Service, which tax return he did not believe to be true, correct and complete as to every material matter in that the said tax return stated that the total income of Richard and Ilana Knapp was $30,782; whereas, as he then and there well knew, he received during the calendar year 1978 substantial other income, to wit, approximately $6,410 from false and fraudulent expense vouchers submitted by RICHARD J. KNAPP to the National Broadcasting Company, Inc.

(Title 26, United States Code, Section 7206(1).)

COUNT SIX

The Grand Jury further charges:

On or about March 31, 1979, in the Southern District of New York, RICHARD J. KNAPP, the defendant, who during the calendar year 1978 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by himself and his wife to the United States of America for the calendar year 1978, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed to the Internal Revenue Service a false and fraudulent income tax return on behalf of himself and his wife, wherein it was stated that their joint taxable income for the calendar year 1978 was $23,896 and that the

amount of income tax due and owing thereon was the sum of $3,744, whereas, as he then and there well knew, their true joint taxable income for the said calendar year was the sum of $30,306, upon which there was due and owing to the United States of America an income tax of $5,840.

(Title 26, United States Code, Section 2701.)

s/Ruth Harris
Foreperson

s/John S. Martin, Jr.
United States Attorney

APPENDIX B—JUDGMENT OF CONVICTION

United States District Court

United States of America
vs.
RICHARD J. KNAPP

Docket No. 81 Cr. 0543(LEM)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date 1-12-82
WITH COUNSEL Leon Dicker, Esq.

PLEA—NOT GUILTY

FINDING AND JUDGMENT—There being a verdict of GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly making and subscribing a tax return which he verified by written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service which tax return he did not believe to be true, correct and complete as to every material matter, as charged in Counts 1 and 3 (26 U.S.C. §7201[1]); and of unlawfully, wilfully and knowingly attempting to evade a large part of the income tax due and owing to the United States by preparing and causing to be prepared, signing and causing to be signed, and mailing and causing to be mailed a false and fraudulent income tax return as charged in Counts 2 and 4 (26 U.S.C. §7201).

SENTENCE OR PROBATION ORDER—The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of COUNTS ONE, TWO, THREE, AND FOUR, pursuant to Title 18, U.S.C., §3651, as amended, with the provision that he be confined in a jail-type institution for a period of SIX (6) MONTHS, as provided in the aforesaid section.

Execution of the remainder of the prison sentence is SUSPENDED, and the defendant is placed on probation for a period of TWO AND ONE-HALF (2½) YEARS, to commence upon expiration of the period of confinement, subject to the standing probation order of this Court.

SPECIAL CONDITIONS—The defendant is FINED FIVE THOUSAND ($5,000.00) DOLLARS and the costs of prosecution on each of Counts One and Three, and FINED TEN THOUSAND ($10,000.00) DOLLARS and the costs of prosecution on each of Counts Two and Four.

ADDITIONAL CONDITIONS OF PROBATION—All the prison sentences, the fines, and the costs of prosecution are to run CONCURRENTLY with each other. Defendant is to stand committed until the total fine of TEN THOUSAND ($10,000.00) DOLLARS and the total costs of prosecution are paid, or he is otherwise discharged according to law.

Execution of sentence is STAYED pending appeal. Bail continued. In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side

of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and rescind probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT
FILED
JAN 12 1982
S.D. OF N.Y.
s/ Lloyd F. MacMahon
Dated 1-12-82

APPENDIX C—UNREPORTED OPINION OF COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23rd day of April, one thousand nine hundred and eighty-two.

PRESENT: HONORABLE LEONARD P. MOORE,
HONORABLE HENRY J. FRIENDLY,
HONORABLE THOMAS J. MESKILL,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FILED
APR 23 1982
SECOND CIRCUIT
82-1010

UNITED STATES OF AMERICA,
Appellee,

v.

RICHARD J. KNAPP,
Defendant-Appellant.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

This is an appeal from a judgment entered after a jury trial in the United States District Court for the Southern District of New York, MacMahon, *C.J.*, convicting

Richard J. Knapp of two counts of making and subscribing a false federal income tax return, and two counts of tax evasion, 26 U.S.C. §§7201, 7206. Knapp was sentenced to four concurrent three-year terms of imprisonment, all but six months of each suspended, a subsequent two and one-half year term of probation, concurrent fines of $5,000 on each of the first two counts and $10,000 on each of the final two counts, and costs of prosecution. Knapp is at liberty pending this appeal.

Knapp raises five claims of error on appeal, all of which are without merit. The evidence, when viewed in the light most favorable to the government, *United States v. Losada*, slip op. 1645, 1654 (2d Cir. Mar. 12, 1982), is sufficient to support the jury's verdict. Indeed, Knapp all but concedes that the evidence was sufficient when he states: "The inference could be drawn [from the evidence presented] that Knapp kept the difference between [the amounts shown on the] vouchers and the amount of money actually paid to vendors doing business with NBC." Brief for Appellant at 10.

Knapp claims that the jury instructions were erroneous, unfair and prejudicial. Knapp has waived most of his claims with respect to the jury charge by failing to object at trial. Fed. R. Crim. P. 30. In any event, we believe that when taken as a whole, *see Cupp v. Naughten*, 414 U.S. 141, 146-47 (1973), the jury charge was fair and complete.

Knapp next complains that he should have been allowed to elicit evidence that a defense witness who was charged with an offense similar to that for which Knapp was being tried and growing out of parallel circumstances had previously been acquitted. Knapp's theory of admissibility rests on a speculative claim that the jury may have drawn inferences undermining the credibility of this defense witness in the absence of evidence of his prior acquittal. The district court did not abuse its discretion in

ruling the proffered evidence inadmissible in the circumstances of this case. *See generally United States v. Sindona*, 636 F.2d 792, 800 (2d Cir. 1979), *cert. denied*, 451 U.S. 912 (1981); Fed. R. Evid. 403.

Because the government sought to establish Knapp's income tax violations by proving that he obtained specific items of unreported income rather than by inference from unexplained increases in his net worth, his claim based upon *Holland v. United States*, 348 U.S. 121 (1954), is inapposite. *See United States v. Falley*, 489 F.2d 33, 39-40 (2d Cir. 1973).

We have carefully reviewed Knapp's claim that the conduct of the trial judge demonstrated his bias in favor of the government and thus prejudiced the jury against it. A criminal defendant is guaranteed a fair trial, not a perfect one. *See United States v. Robinson*, 635 F.2d 981, 984 (2d Cir. 1980), *cert. denied*, 451 U.S. 992 (1981). While some of Judge MacMahon's comments during Knapp's trial "would better have been left unsaid," *id.* at 985, they were neither so many nor so prejudicial that Knapp was deprived of a fair trial.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of the district court is affirmed.

s/ Leonard P. Moore
Leonard P. Moore, U.S.C.J.

s/ Henry J. Friendly
Henry J. Friendly, U.S.C.J.

s/ Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

APPENDIX D—ORDER OF COURT OF APPEALS DENYING PETITION FOR REHEARING AND REHEARING EN BANC

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the ninth day of June, one thousand nine hundred and eighty-two.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RICHARD J. KNAPP,
Defendant-Appellant.

UNITED STATES COURT OF APPEALS
FILED
JUN 9, 1982
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT
No. 82-1010

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the defendant-appellant, Richard J. Knapp,

Upon consideration by the panel that heard the appeal, it is

ORDERED that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeal and that no such judge has requested that a vote be taken thereon.

A. Daniel Fusaro, Clerk

by: s/ Francis X. Gindhart
Francis X. Gindhart
Chief Deputy Clerk

APPENDIX E--ORDER OF COURT OF APPEALS DENYING MOTION FOR STAY OF ISSUANCE OF MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-against-

RICHARD J. KNAPP,
Defendant-Appellant-Petitioner.

Docket Number 82 1010
NOTICE OF MOTION
for Stay of Issuance of Mandate, or its Recall
Pursuant to FRAP 41

MOTION BY:
LEON DICKER
400 Madison Avenue, New York, NY. 10017
(212) 421 3400
Has a request of opposing counsel for consent been refused? Yes.
Has service been effected? Yes.
Is oral argument desired? No.
Judge or agency whose order is being appealed: Judgment of Conviction

OPPOSING COUNSEL:
JOHN MARTIN, U.S.Atty., 1 St.Andrews Plaza, New York, N.Y. 10007 MICHAEL L. TABAK, AUSA 791 1941

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? No.

Would expedited appeal eliminate need for this motion? No.

If no, explain why not: Petition for Rehearing being filed simultaneously.

Brief statement of the relief requested: Stay of the issuance of mandate or its recall pending application for a Writ of Certiorari to the Supreme Court of the United States.

Previous requests for similar relief and disposition: None.

Statement of the issue(s) presented by this motion:
See supporting affidavit attached hereto. Also, see Petition for Rehearing and Rehearing en banc filed separately, but simultaneously with this motion.

Brief statement of the facts (with page references to the moving papers):
See supporting affidavit attached hereto. Also, see Petition for Rehearing and Rehearing en banc filed separately, but simultaneously with this motion.

Summary of the argument (with page references to the moving papers):
See supporting affidavit attached hereto. Also, see Petition for Rehearing and Rehearing en banc filed separately, but simultaneously with this motion.

Date May 6, 1982

s/ Leon Dicker
LEON DICKER
Attorney for Defendant-Appellant-Petitioner

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

s/ Leonard P. Moore by TJM
Leonard P. Moore, U.S.C.J. (by TJM)

s/ Henry J. Friendly
Henry J. Friendly, U.S.C.J.

s/ Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

Date June 10, 1982
UNITED STATES COURT OF APPEALS
FILED
JUN 10 1982
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX F—LETTER FROM CLERK OF SUPREME COURT DENYING APPLICATION FOR STAY

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

June 18, 1982

Leon Dicker, Esq.
400 Madison Avenue
New York, New York 10017

RE: Richard J. Knapp v. United States
No. A-1088

Dear Mr. Dicker:

Your application for stay in the above-entitled case was presented to Justice Marshall who has endorsed thereon the following:

"Application—Denied
Thurgood Marshall
6/18/82"

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By s/ Christopher W. Vasil
Christopher W. Vasil
Deputy Clerk

rjb
cc: The Hon. Rex E. Lee
A. Daniel Fusaro, Esq., Clerk, US Court of Appeals for the Second Circuit (your No. 82-1010)

APPENDIX G—BILL OF COSTS TO BE INCLUDED IN JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

REVISED BILL OF COSTS

UNITED STATES OF AMERICA,

vs.

RICHARD J. KNAPP,

Defendant.

81 Cr. 543 (LFM)
Civil Action File No.

Judgment having been entered in the above entitled action on the 12th day of January, 1982, against Richard J. Knapp, defendant, the clerk is requested to tax the following as costs:

BILL OF COSTS

**

Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	$1,960.45
Fees for witnesses (itemized on reverse side)	7,199.78
Docket fees under 28 U.S.C. 1923	60.00
Total	$9,220.23

State of New York
County of New York ss.

I, Michael L. Tabak, Assistant United States Attorney, do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day served in hand, per prior agreement, to John L. Van Horne, III, Esquire, counsel to Richard J. Knapp.

Please take notice that I will appear before the Clerk who will tax said costs on June 21, 1982 at 10:00 a.m., per prior agreement.

Michael L. Tabak, AUSA
Attorney for United States of America

Consented to by Leon Dicker, for def. Richard J. Knapp

NOTE: SEE REVERSE SIDE FOR AUTHORITIES ON TAXING COSTS.

Witness Fees (computation, cf. 28 U. S. C. 1821 for statutory fees)

Name and Residence	Attendance		Subsistence		Mileage		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
Joseph Torina, NY, NY	1	30.00				3.00	33.00
Richard Lynn, Miami, FL	3	90.00	3	184.00		343.00	617.00
Martin Gallagher, NY, NY	1	30.00				18.90	48.90
Michael Henry, High Point, NC	2	60.00	2	109.00		232.00	401.00
Charles Gilman, NY, NY	1	30.00				6.00	36.00
James Huie, Bristol, CT	5	150.00	4	218.00		437.28	805.28
Willie McCoy, Greensboro, NC	2	60.00	2	109.00		308.00	477.00
J.A. McKinney, Greensboro, NC	3	90.00	3	184.00		308.00	582.00
France Moise, NY, NY	1	30.00				3.00	33.00
Peggy Maness, Greensboro, NC	2	60.00	2	109.00		290.60	459.60
Janice Noel, Manchach, TX	2	60.00	2	109.00		336.00	505.00
James Noland, Edgewater, FL	3	90.00	3	184.00		308.00	582.00
Roy Regozin, NY, NY	1	30.00				3.00	33.00
Thomas Sammons, San Antonio, TX	3	90.00	3	184.00		330.00	604.00
Eva Trevino, Woodlands, TX	3	90.00	3	184.00		477.00	751.00
George Bachman, Austin, TX	3	90.00	3	184.00		342.00	616.00
Chester Kelley, Conroe, TX	3	90.00	3	184.00		342.00	616.00
					TOTAL		$7,199.78

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:

"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an af-

fidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28 which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:

Rule 54(d)

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but cost against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Rule 6 (e)

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

Rule 58 (In Part)

"The entry of the judgment shall not be delayed for the taxing of costs."

EXHIBIT H—AFFIDAVIT OF RUTH LAUTERSTEIN

STATE OF NEW YORK
COUNTY OF NEW YORK

I, Ruth Lauterstein, being duly sworn deposes and say:

My feelings about the witness Torina were that it was obvious that he was "on the take". That he was worried and resentful—possibly fearful of prosecution himself. He had been fired which I felt was self explanatory. If I had known that he had been tried and acquitted before he testified it would have given his testimony more weight and influenced my verdict.

s/ Ruth Lauterstein

Sworn to before me
this 6th day of May 1982
s/ Leon Dicker
LEON DICKER
Notary Public, State of New York
No. 30-6022100
Qualified in Nassau County
Commission Expires March 30, 1984

APPENDIX I—AFFIDAVIT OF MAX CHARMAZ

STATE OF NEW YORK
COUNTY OF NEW YORK

I, Max Charmaz, being duly sworn, deposes and says:

In response to a question put to me by the attorney for Richard Knapp, I feel that if I had known that Joseph Torina had been tried and acquitted prior to his testifying in Knapp's trial I would have evaluated his testimony differently, which might have effected my verdict.

s/ Max Charmaz

Sworn to before me
this 4th day of May 1978
s/ Leon Dicker
LEON DICKER
Notary Public, State of New York
No. 30-6022100
Qualified in Nassau County
Commission Expires March 30, 1984

APPENDIX J—EXCERPT OF TRIAL COURT'S CHARGE TO THE JURY

So the key question here is not whether money entrusted to the defendant to be spent for NBC's purposes and benefit was voucherable or not voucherable, but whether the defendant spent or kept the money or part of it for his own use, benefit, purposes or personal gain. Thus, money received from NBC and kept for his own use and benefit or gain is taxable income; and this is so whether or not NBC allowed, sanctioned, ignored, or overlooked false or inflated vouchers or whether NBC was defrauded, foolish, careless, negligent, stupid or naive.

In other words, the government does not have to prove that the defendant stole or embezzled funds which belonged to NBC. The crimes charged here are not embezzlement or criminal misuse of NBC's money, but filing false tax returns and attempting to evade income taxes. All the government must prove beyond a reasonable doubt as far as receipt of income is concerned is that the defendant got money, that he kept it or used it for his own use, gain or benefit, that he knew he had additional income, substantial additional income, and that he wilfully filed a false return and wilfully attempted to evade his full and true income tax.

Now, income acquired unlawfully is just as taxable as lawful income. The tax law, in other words, doesn't care how a person gets his income. This may seem strange to you at first glance. But if you think about it, you will realize that it would be most unjust to relieve embezzlers from paying taxes on income acquired by their breach of trust, while requiring honest people to pay their taxes on almost every conceivable type of income.

Now remember that the defendant, Knapp, is not on trial for embezzlement. He is on trial for violating the federal tax law. You may find him guilty of violating those laws if you find that he wilfully understated his gross in-

come for the year in question by not reporting substantial income embezzled by him from NBC, through the submission of false and fraudulent expense vouchers.

Embezzlement, for our purposes, means that a person lawfully entrusted with the possession of money which belongs to another, knowingly and intentionally takes, misuses, diverts, converts or misappropriates the money for his own use, benefit or gain, against the interests, benefit and right of the true owners. So in this case, before the defendant can be found to have embezzled money or funds of his employer, NBC, it must appear beyond a reasonable doubt from the evidence that funds or money belonging to NBC came into the defendant's possession lawfully, because of his position of trust as a unit manager in NBC's sports division, and that the funds were knowingly and intentionally taken, diverted, converted or misappropriated by him for his own use, benefit, purposes or gain, against the interests and right of his employer, NBC, to the defendant's honest and faithful use of NBC's money and funds solely for its benefit, purpose and gain.

On this issue of embezzlement, the government contends that the evidence shows that NBC entrusted Knapp with money to be used for the benefit of NBC; but that Knapp unlawfully converted the money to his own use and benefit. In other words, that he kept or spent the money for himself or used it for his own purposes, with an intent to defraud NBC.

On the other hand, the defendant contends and testified that he spent the money solely for the benefit and purpose of NBC, keeping none of it for himself.

You heard all of the evidence in this case. It is for you to decide just where the truth lies on this key issue. Mere understatement of a large and substantial portion of his gross income, however, is not alone sufficient to constitute the crimes charged in Counts 1 and 3. Before the defendant can be convicted of those crimes, you must first find beyond a reasonable doubt that he knew and ***